

REMARKS

Claims 1, 3, 4, 6, 7, 10, 11, 28-31, 35-42, 45-51, 53, 55, 57, 59, and 61-64 are pending in this application. Claims 7 and 11 stand rejected and claims 51-61 are objected to. Applicant wishes to thank the Examiner for the indication of allowance of claims 1, 3, 4, 6, 10, 11, 28-31, 35-42, 45, 46, 48, 49, and 62-64 in the present Office Action, and the indication of allowable subject matter in claims 51, 53, 55, 57, 59 and 61 in the Office Action dated July 6, 2005. By this Amendment, claims 7, 11, 51, 53, 55, 57, 59 and 61 have been amended and claims 52, 54, 56, 58, and 60 have been canceled without prejudice. The amendments made to the claims do not alter the scope of these claims, nor have these amendments been made to define over the prior art. Rather, the amendments to the claims have been made for cosmetic reasons to improve the form thereof. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

Applicant notes that the PTO-SB08 form submitted on September 30, 2005, was not acknowledged by the Examiner. Applicant respectfully requests that the Examiner review the references, initial the SB08, and return same to Applicant. For the Examiner's convenience, a copy of the SB08 is attached hereto.

Claims 7 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Applicant's admitted prior art in view of U.S. Patent No. 5,956,339 ("Harada") and further in view of U.S. Patent No. 6,678,244 ("Appanna"). Applicant respectfully traverses this rejection.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine references to arrive at the claimed subject matter. The prior art references must also

teach or suggest all the limitations of the claim in question. See, M.P.E.P. § 706.02(j). A reference can only be used for what it clearly discloses or suggests. See, In re Hummer, 113 U.S.P.Q. 66 (C.C.P.A. 1957); In re Stencel, 4 U.S.P.Q.2d 1071, 1073 (Fed. Cir. 1987). Here, the references, whether taken individually or in combination, do not disclose or suggest the invention claimed by the Applicant.

Among the limitations of independent claims 7 and 11 not present in the cited references is that the path control protocol identifies the candidate path as having a maximum remaining bandwidth of the plurality of paths and identifies the link of the candidate path that has a minimum remaining bandwidth. The above-recited features are not disclosed in the admitted prior art, Harada, or Appanna.

Harada selects one of the plurality of paths using the following procedure. First, bandwidths of the links are summed for each path and the path having the largest total bandwidth is selected. If two or more paths have the same total bandwidth, then the average bandwidth is obtained by dividing the total bandwidth by the number of links for each candidate path, a link having the most deviated bandwidth from the average bandwidth for each candidate path and deviation ratio is determined and then, the path having the smallest deviation ratio from the candidate path is selected. In contrast, as explicitly recited in Applicant's claim, the path protocol is based on a minimum remaining bandwidth from among the paths having remaining bandwidths. As such, Harada fails to disclose Applicant's explicitly recited limitation.

Appanna was included, not to cure the deficiency in Harada discussed above but for its disclosure of additional limitations which, even if it were to show, does not cure those deficiencies discussed above. Therefore, Applicant submits that claims 7 and 11 are allowable over the cited references.

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Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

Dated: December 29, 2005

Respectfully submitted,

By

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Attachments (PTO Form SB08, filed September 30, 2005)